



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: NOVEMBER 21, 2022

IN THE MATTER OF:

Appeal Board No. 625200

PRESENT: JUNE F. O'NEILL, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective October 29, 2021, on the basis that the claimant voluntarily separated from employment without good cause. The claimant requested a hearing. The Commissioner of Labor objected that the hearing request was not made within the time allowed by statute.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed July 19, 2022 (), the Administrative Law Judge overruled the Commissioner of Labors' timeliness objection and sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board, insofar as it sustained the initial determination. The Board considered the arguments contained in the written statement submitted by the claimant.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant worked for the employer's heating and cooling company as a customer service dispatcher from February 4, 2019 until October 28, 2021. In or about December 2020 and while the claimant

was pregnant, the employer's project manager touched her belly and kissed her on the cheek without her consent. She reported the incident to the employer's Human Resources (HR) representative. After being out for a time on disability

leave, the claimant returned to work in or about June 2021. In or about July 2021, while the claimant and the project manager were working together, the project manager smacked her on the side of her behind. The claimant again reported the incident to the employer's HR representative.

In or about August 2021, the claimant was in her office; she was bent over and reaching into her purse with her back against the door when the project manager came in, hugged her from behind and kissed her on her cheek. As with the other incidents, she reported the incident to the HR representative. Although the claimant felt uncomfortable whenever she had to work with the project manager, she was a single mother and needed the employment; she also believed that HR was working to address her concerns.

In September 2021, the claimant learned that another female employee had also complained about being sexually harassed by the project manager; the claimant hoped that at this point the employer would finally address the incidents. However, the claimant learned that the HR representative had left the company on October 8, 2021. The claimant then realized that her complaints would not be investigated. Between October 8 and October 28, 2021, the claimant called out all but a few workdays, making excuses for not reporting to work, including that she was ill and that her child had been exposed to the Covid virus. When the claimant could no longer call out, she texted her resignation to the company president citing only personal reasons for resigning and referencing that her son had been exposed to Covid.

OPINION: The credible evidence establishes that the claimant resigned after her reported incidents of sexual harassment remained unaddressed. The claimant's credible and uncontroverted testimony establishes that she was subjected to sexual harassment by the employer's project manager and that she reported each incident to the employer's HR representative in the hopes her concerns would be addressed. We do not agree with the Judge's conclusion that because the claimant did not disclose to the company president that she was resigning due to the sexual harassment she faced and because she resigned some two months after the final incident, that she did not resign because of the sexual harassment. The claimant credibly testified that, although the employer had not yet resolved her concerns, she believed that the HR rep was attempting to do so, particularly after another employee raised the same concerns in September. It was also not unreasonable for the claimant to have given the employer this time to address her concerns. We note that the employer did not contest that the HR representative had left the company in

early October and that, thereafter, the claimant had called out of work almost every workday between that time and her ultimate resignation on October 28. The fact that the claimant stayed on for the balance of the month of October because she needed the work is not unreasonable and does not negate that she ultimately resigned due to the sexual harassment she faced. The fact that she called out almost each workday rather than report to work in that month lends credence to her testimony that she resigned when she felt that the employer would not address her concerns of sexual harassment. On this record, the claimant has established that she was subjected to sexual harassment by the project manager and that, despite her reports of the incidents to the employer's HR representative, her concerns remained unaddressed. Under the circumstances, we conclude that the claimant's resignation was with good cause.

DECISION: The decision of the Administrative Law Judge, insofar as appealed from, is reversed.

The initial determination, disqualifying the claimant from receiving benefits, effective October 29, 2021, on the basis that the claimant voluntarily separated from employment without good cause, is overruled.

The claimant is allowed benefits with respect to the issues decided herein.

JUNE F. O'NEILL, MEMBER